BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

DENNIS W. SULLIVAN Claimant	
VS.	Docket No. 190,763
TRI-STATE BUILDING AND SUPPLY, INC. & D.G. ROBINSON EXCAVATION Respondents	DOCKET NO. 130,703
AND (
HARTFORD ACCIDENT & INDEMNITY CO.	
Insurance Carrier) AND	
KANSAS WORKERS COMPENSATION FUND	

ORDER

The respondent, Tri-State Building and Supply, Inc., and Hartford Accident & Indemnity Co., request the Appeals Board to review the Preliminary Hearing Order of Administrative Law Judge Steven J. Howard entered in this proceeding on December 9, 1994.

ISSUES

Although the Order is somewhat nebulous, it appears the Administrative Law Judge ordered Tri-State Building Supply, Inc., and Hartford Accident & Indemnity to provide medical benefits to the claimant. The sole issue raised on appeal is whether claimant was an employee of D.G. Robinson Excavation Company at the time of the work-related accident or whether he was an independent contractor.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for purposes of preliminary hearing, the Appeals Board finds, as follows:

The Preliminary Hearing Order of the Administrative Law Judge should be affirmed.

The Appeals Board agrees with the Administrative Law Judge that claimant, at the time of the accident on December 3, 1992, was an employee of D.G. Robinson Excavation Company. Although claimant had previously performed work for the excavation company as an independent contractor and truck driver, he was working for the company as an employee when he was performing demolition work as a laborer. At the time of the accident, the excavation company was paying claimant \$10 per hour, furnishing most, if not all, of the tools used in the demolition work, and maintained direct control of claimant's work activities. Claimant testified he expected withholdings from his check. These factors, plus others, support the conclusion that claimant was an employee at the time of the accident.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Preliminary Hearing Order of Administrative Law Judge Steven J. Howard entered in this proceeding on December 9, 1994, should be, and hereby is, affirmed in all respects.

IT IS SO ORDERED.
Dated this day of February, 1995.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: Michael R. Wallace, Overland Park, KS Garry W. Lassman, Pittsburg, KS Robert S. Tomassi, Pittsburg, KS Thomas A. Hamill, Overland Park, KS Steven J. Howard, Administrative Law Judge George Gomez, Director